IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5185 of 1992

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARAT S. DAFTARY

Versus

GUJARAT ELECTRICITY BOARD & Ors.

Appearance:

1. Special Civil Application No. 5185 of 1992

MR HARDIK RAVAL for KM PATEL for Petitioner

Respondents :: Served

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 17/09/2004

ORAL JUDGEMENT

Heard the learned advocate.

By order dated 17th April, 1982 made by the Establishment Officer [Personnel], the petitioner was appointed as Industrial Relations Officer in Gujarat Electricity Board [hereinafter referred to as, "the Board"], the respondent herein.

A disciplinary action was initiated against the petitioner by issuing chargesheet dated 27th May, 1988. It was alleged that the petitioner, Industrial Relations Officer posted at Surat had, committed acts of misconduct of -

(1) Leaving headquarters without prior permission;
(2) Indiscipline and undisciplined behaviour;
(3) Insubordination;
(4) Disobedience of any order of the superior officer or a senior officer;
(5) Negligence resulting in or likely to result in loss to the Board or inconvenience to the public;
(6) Instances of disloyalty to the Board or superiors under whom the employee is working; and
(7) Breach of trust, misappropriation or dishonesty in connection with the affairs or property of the Board.

It was alleged that for the month of March, 1988 as against the actual expenses of Rs. 3,687=69p., the petitioner had claimed a sum of Rs.12,375=10p. as 'Travelling Expenses'. Under Service Regulation No.185, the petitioner was entitled to actual expenses of petrol incurred by him. Nevertheless, the petitioner had claimed travelling expenses on the basis of mileage. It was further alleged that on 11th March, 1988 and 12th March, 1988, the petitioner travelled from Surat to Kapadwanj & back and from Surat to Ahmedabad & back respectively. For the said journey, the petitioner claimed travelling expenses on the basis of mileage of 522 and 572 kilometers respectively. Similarly, on 16th March, 1988 and 17th March, 1988, the petitioner undertook journey from Surat to Nadiad & back and from Surat to Ahmedabad & back respectively. The aforesaid imputation of charge, except the charge that the petitioner was guilty of insubordination, was held to be proved by the Inquiry Officer. The said finding of the inquiry officer was accepted by the disciplinary authority. By order dated 1st April, 1992 made by the Member [Administration] of the Board, the petitioner was ordered to be dismissed from service. The departmental appeal before the appellate authority came to be rejected on 16th June, 1992. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr. Raval has submitted that the initiation of disciplinary proceeding, the finding of guilt recorded and the order of punishment made against the petitioner are null and void and are required to be set-aside.

Mr. Raval has submitted that the nature of duties of the petitioner involved extensive touring. On 28th February, 1988, the petitioner had submitted his Tour Programme for the month of March, 1988. The petitioner had also informed that the petitioner should come back to Surat from his tour on the dates, as intimated to him. The said tour programme was also approved by the superior authority. He has submitted that the petitioner was permitted by the head office to use his own vehicle. This fact was also admitted by the departmental witness-Shri O.M Shah, Additional Chief Engineer, Surat Zone. He has submitted that the petitioner having used his own vehicle was entitled to travelling expenses on the basis of mileage. The conduct of the petitioner in using his own vehicle for travelling on duty and in claiming travelling expenses on mileage cannot be said to be a misconduct. The petitioner's returning to his headquarter at Surat on each day after completion of duty from outside Surat also cannot amount to misconduct. The said incident of travelling by the petitioner in his own vehicle and in returning to Surat each day does not reveal a case of insubordination or leaving the headquarter without prior permission, indiscipline or undisciplined behaviour, disobedience, negligence resulting in or likely to result in loss to the Board or inconvenience to the public, breach of trust, misappropriation or dishonesty as mentioned in the imputation of charge. He has submitted that there was no basis for initiation of the disciplinary proceeding. Even the finding of guilt recorded by the inquiry officer and accepted by the disciplinary authority is beyond the scope of imputation of charge made against the petitioner. In the event, the said conduct of the petitioner is held to be irregular, the petitioner could not have been visited with the punishment of dismissal from service. Mr. Raval has submitted that the relevant clause no. 6 (i) of the Board's Employees' Conduct, Discipline & Appeal Procedure [hereinafter referred to as, "the Procedure"] enjoins upon the competent authority to serve a notice to the delinquent employee communicating him its finding and asking him to show cause why the contemplated punishment should not be inflicted upon him. Clause 7 [1](B) of the Procedure provides that, "..No person shall be dismissed or removed

or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him." However, under sub-clause (b) of Clause 7 [1](B), an exception has been made to the said requirement where the disciplinary authority, for some reason to be recorded by that authority in writing, satisfied that it is not reasonably practicable to give such person an opportunity of showing cause. Mr. Raval has submitted that in the present case, the disciplinary authority has without recording reasons in writing exercised the powers conferred by the above referred sub-clause (b) of Clause 7[1](B) of the Procedure. Mr. Raval has submitted that the petitioner was always available. There was no reason why it should not have been practicable to give notice to show cause, as contemplated by Clause 6 (i), to the petitioner. Neither the impugned order of punishment discloses such reason nor such reasons have been placed before the Court. In absence of the existence of the circumstances justifying invocation of the aforesaid exception, the order of dismissal from service made against the petitioner without following the mandatory procedure under the aforesaid Clause 6 (i) is vitiated. He has further submitted that clause 11 (b) of the said Procedure provides that, "..the authority competent to inflict the punishment of termination of service, discharge, removal or dismissal shall not be subordinate to the appointing authority." He has relied upon the submissions made in paragraph 16 of the petition and has submitted that the Chairman of the Board shall be the appointing authority for the petitioner. Hence, the order of punishment of dismissal from service made by the Member [Administration], subordinate to the Chairman is made without the authority of law. Mr. Raval has also submitted that several documents which were demanded by the petitioner were not furnished to him. The disciplinary proceedings and the order of punishment are, therefore, vitiated for contravention of principles of natural justice and fair play.

On perusal of the memorandum of charge, it appears that the Board has failed to make out a clear case of commission of acts of misconduct, as stated in the chargesheet. No specific statement has been made that the facility of using office vehicle for journey was available to the petitioner; and that the petitioner having not availed of the said facility, was not entitled to travelling expenses on the basis of mileage for using his own vehicle. No specific allegation has been made that the petitioner had not travelled by the shortest route. In absence of such specific charge, the acts of

the petitioner in travelling in his own vehicle and in claiming travelling expenses as per the mileage cannot be held to be misconduct warranting an order of punishment. Further, on perusal of the inquiry report, it appears that the inquiry officer himself took over the role of prosecuting authority also. The inquiry officer has recorded finding with respect to the petitioner not living at the headquarter at Surat, his claiming House Rent Allowance etc., which were not the subject matter of inquiry. Thus, the inquiry officer has travelled beyond the scope of the inquiry. The inquiry officer has thus failed to be neutral and unbiased.

In my view, either there was no warrant for initiating disciplinary proceeding against the petitioner or the Board has failed to draw specific charge against the petitioner. In either case, the finding of guilt recorded by the inquiry officer is perverse, beyond the scope of the charge levelled against the petitioner and is based on no evidence. The procedure adopted by the inquiry officer is also contrary to the settled law of disciplinary proceedings. Being the inquiring authority, the inquiry officer could not have acted as a prosecuting authority. It also transpires that neither the petitioner was given copies of the documents relied upon by the inquiry officer nor was he given the names of the witnesses in advance. The disciplinary authority has, in order of punishment dated 1st April, 1992, referred to the requirement under clause 6 (i) of the Procedure of giving notice to show cause why the contemplated punishment should not be inflicted. However, it has invoked the powers conferred by sub-clause (b) of clause 7 [1] (B) of the Procedure. Without recording the reasons for the same, it has recorded that, "the undersigned is satisfied that it is not reasonably practicable to give Shri B.S Daftary an opportunity of showing cause and have recorded reasons in writing for not giving to Shri B.S Daftary an opportunity to show cause." If the disciplinary authority had recorded the reasons for invoking the powers under sub-clause (b) of clause 7 [1] (B) of the Procedure, the same have not been brought forth on the record. It is incomprehensible why it should not have been reasonably practicable to give the petitioner opportunity to show cause against the intended punishment. Thus, the disciplinary authority also has failed to follow the required procedure. I do not agree with the contention that the appointing authority of the petitioner was the Chairman of the Board and the order of punishment made by the Member [Administration] is without the authority of law.

In view of the above discussion, I am of the opinion that the disciplinary proceeding and the order of punishment made against the petitioner are illegal and are vitiated.

Mr. Raval has fairly submitted that since dismissal from service, the petitioner pursued further education. He was enrolled as member of the Bar Council of Gujarat in the year 1993 and he started practice in law in 1994.

In the result, the petition should succeed. The impugned order dated 16th June, 1992 made by the appellate authority and the order dated 1st April, 1992 made by the disciplinary authority are quashed and setaside. The respondent Gujarat Electricity Board is directed to reinstate the petitioner as Industrial Relations Officer within three weeks from the date of the receipt of the writ of this Court. Upon reinstatement of the petitioner as Industrial Relations Officer, the petitioner shall be given order of posting. On reinstatement in service, for the purpose of seniority, pay fixation and superannuation benefits, the petitioner shall be deemed to have continued in service from the date of his dismissal from service till the date of reinstatement in service. The petitioner, however, shall not be entitled to salary or any other allowance or monetary benefit or benefit of leave for the said period from 1st April, 1992 till the date of his reinstatement in service. The petitioner shall be entitled to compensation in the sum of Rs. 25,000/=. Such amount of compensation shall be paid to the petitioner within two weeks from the date of his reinstatement in service.

The petition is allowed in the above terms with costs. The advocate's fee for the purpose of cost is quantified at Rs. 2,500/=. Rule is made absolute to the above extent. The registry shall send the writ forthwith.

{Miss R.M Doshit, J.}